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ATTORNEY FOR DEFENDANT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MICHAEL JAMES MASON,
Defendant.

CR-16-23-BU-DLC-02

**REPLY BRIEF IN SUPPORT OF
MOTION TO DISMISS
COUNTS I AND II
OF THE INDICTMENT**

The government's response to Defendant's Motion to Dismiss Counts I and II of the Indictment does not address the substance of Mason's argument. Counts I and II are subject to dismissal because they do not allege a federal crime.

Mason cultivated his marijuana plants while serving as a registered "caregiver" or "provider" under Montana law. Therefore, he cannot be

charged with the “manufacture” of marijuana as that term is defined under the Controlled Substances Act (CSA).

Under the Controlled Substances Act, the term “manufacture” means:

the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; *except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice.* The term “manufacturer” means a person who manufactures a drug or other substance.

21 U.S.C. § 802(15) (emphasis added).

According to this definition, the term “manufacture” does not encompass (1) the “preparation, compounding, packaging, or labeling” of a drug; (2) by a “practitioner”; (3) who acts in conformity with applicable state law; and (4) administers or dispenses the drug “in the course of his professional practice.” *Id.*

The term “practitioner,” as defined in the Controlled Substances Act, means:

a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, *or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense,*

conduct research with respect to, *administer*, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

21 U.S.C. § 802(21) (emphasis supplied).

Thus, like the definition of manufacture, the broad definition of practitioner expressly recognizes the role of states in the licensing and registration of practitioners. This statutory language is in keeping with the pre-emption provision of the CSA, which provides:

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision . . . and that State law so that the two cannot consistently stand together.

21 U.S.C. § 903.

Based on the plain language of the definition of “manufacture,” the actions of Mason cannot serve as a basis for criminal liability for the manufacture of marijuana. As such, Counts I and II of the Indictment must be dismissed.

DATED this 10th day of February, 2017.

/s/ Ashley Harada

Ashley Harada
Attorney for Defendant

CERTIFICATE OF SERVICE - L.R. 5.2(b)

I hereby certify that on February 10, 2017, a copy of the foregoing document was served on the following persons by the following means:

 1-4 CM-ECF
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